
Authority Board **STAFF REPORT**

Meeting Date: June 21, 2023

Subject	NEW ITEM: Consider the Conduct for Meetings of the Legislative Bodies of the Authority for July 2023
Summary of Issues	<p>In March 2020, amid rising concern surrounding the spread of COVID-19 throughout communities in the State of California, Governor Gavin Newsom (Governor) declared a State of Emergency and issued a series of Executive Orders (EO). These EOs allowed for modifications of the teleconferencing requirements to the Ralph M. Brown Act (Brown Act), which were terminated on September 30, 2021.</p> <p>On September 16, 2021, the Governor signed Assembly Bill 361 (AB361), with an effective date of October 1, 2021, to provide local agencies with the ability to meet remotely during proclaimed state emergencies under modified Brown Act requirements, similar in many ways to the rules and procedures established by the Governor's EOs, with a sunset date of January 1, 2024. It allows public agencies to continue conducting remote teleconferencing meetings in accordance with the Brown Act provision exemptions pursuant to AB361 by adopting a resolution consistent with the terms of California Government Code, Section 54953, Subdivision (e), Paragraph (1), Subparagraph (B).</p> <p>On September 30, 2021, the Authority Board adopted Resolution 21-45-A proclaiming a local emergency, ratifying the proclamation of a State of Emergency, authorizing remote teleconference meetings of the legislative bodies of the Authority, for the period of October 2021 pursuant to the Brown Act provision exemptions under AB361, and authorized</p>

a 30-day renewal to be approved at subsequent meetings by minute order. California Government Code, Section 54953, Subdivision (e), Paragraph (3), Subparagraph (B) (ii) states that a public agency must reconsider the circumstances of the State of Emergency every 30 days and make a finding to continue teleconferencing without compliance with Paragraph (3) of Subdivision (B).

AB361 allows for the continuance of solely remote teleconference meetings without compliance with Paragraph (3) of Subdivision (B) when:

- (A) The legislative body has reconsidered the circumstances of the State of Emergency.
- (B) Any of the following circumstances exist:
 - (i) The State of Emergency continues to directly impact the ability of the members to meet safely in-person.
 - (ii) The State or local officials continue to impose or recommend measures to promote social distancing.

Subparagraph (B) (ii) above applies because local officials (Contra Costa Health Services (CCHS)) continue to recommend social distancing.

On July 20, 2022, the Authority Board authorized staff to transition to hybrid meetings for the regular Authority Board meetings starting in September 2022 and authorized the continuation of conducting remote meetings through September 2022 for all other legislative bodies of the Authority and special meetings of the Authority Board pursuant to the Brown Act provision exemptions of AB361 and consistent with the CCHS' encouragement of online meetings and recommendations for social distancing for public meetings.

On September 21, 2022 and October 19, 2022, the Authority Board reaffirmed this decision and extended it through November 2022. On November 16, 2022, the Authority Board reaffirmed its decision and extended it through December 2022. This was again reaffirmed at a special Authority Board meeting held on December 7, 2022.

On January 18, 2023, the Authority Board reaffirmed its decision for meeting conduct in January and February 2023, and adopted Resolution 23-04-A to re-authorize remote meetings to be held under AB361. On February 15, 2023, the Authority Board reaffirmed its decision for meeting conduct in March 2023. On March 15, 2023, the Authority Board reaffirmed its decision for meeting conduct in April 2023. On April 12, 2023 at a special meeting, the Authority Board approved in-person meetings with a hybrid component for public participation effective April 19, 2023, for the regular Authority Board meetings and the continuation of conducting remote meetings for all other legislative bodies of the Authority and special meetings of the Authority Board pursuant to the Brown Act provision exemptions of AB361 and consistent with the CCHS' recommendations for social distancing for public meetings. On April 19, 2023, the Authority Board reaffirmed its decision for meeting conduct in May 2023. On May 17, 2023, the Authority Board reaffirmed its decision for meeting conduct in June 2023. On June 7, 2023 at a special meeting, the Authority Board reaffirmed its decision for meeting conduct in June 2023. The Authority Board is now reconsidering the conduct of meetings for July 2023, to adhere to the 30-day reauthorization requirement of AB361.

On October 17, 2022, the Governor announced that the COVID-19 State of Emergency would end on February 28,

Recommendations

2023. On March 27, 2023, the CCHS released updated guidance for safely holding public meetings and is recommending social distancing for public meetings, when feasible, to present the lowest risk of transmission of COVID-19. Staff will continue to monitor the local health recommendations and report back to the Authority Board if and when the CCHS' guidance changes.

Due to local officials continuing to recommend measures to promote social distancing consistent with Government Code, Section 54953(e)(3), the Authority Board has the option to continue conducting remote and hybrid meetings under AB361 even after the State of Emergency ended on February 28, 2023.

Based on the updated guidance from the CCHS, staff recommends that the legislative body meetings of the Authority's advisory committees and Authority Board special meetings continue to be conducted remotely and that the regular Authority Board meetings remain in-person with a hybrid component for public participation.

Staff requests that the Authority Board, having reconsidered the circumstances, continue conducting in-person meetings with a hybrid component for public participation for the regular Authority Board meetings and remote meetings for all other legislative bodies of the Authority and special meetings of the Authority Board pursuant to the Brown Act provision exemptions of Assembly Bill 361 (AB361) and consistent with the Contra Costa Health Services' recommendations for social distancing for public meetings, to adhere to the 30-day reconsideration requirement of AB361.

Staff Contact

Tarienne Grover

Financial Implications	There is a minimal fiscal impact for food and travel reimbursements for the Authority Board meetings.
Options	<ol style="list-style-type: none"> 1. The Authority Board could elect to conduct meetings remotely for all legislative bodies of the Authority with a reconsideration of the circumstances every 30 days. 2. The Authority Board could elect to transition to hybrid meetings for all legislative bodies of the Authority effective July 1, 2023, with a written safety protocol recommending social distancing. 3. The Authority Board could elect to resume in-person meetings for all legislative bodies of the Authority effective July 1, 2023, with a written safety protocol recommending social distancing. 4. The Authority Board could elect to reaffirm its decision to continue holding in-person meetings for the regular Authority Board meetings and continue remote meetings for all other legislative bodies of the Authority in addition to special meetings of the Authority Board, with a written safety protocol recommending social distancing.
Attachments	A. CCHS Recommendations for Safely Holding Public Meetings, dated March 27, 2023
Changes from Committee	N/A

Background

In March 2020, amid rising concern surrounding the spread of COVID-19 throughout communities in the State of California, the Governor declared a State of Emergency and issued a series of EOs. These EOs (N-25-20, N-29-20, and N-35-20) collectively modified certain requirements created by the Brown Act, the State's local agency public meetings law.

The Executive Orders waived several requirements, including requirements in the Brown Act expressly or impliedly requiring the physical presence of members of the legislative body, the clerk, or other personnel of the body, or of the public as a condition of participation in or for the purpose of establishing a quorum for a public meeting.

Legislative bodies of the Authority include Authority Board meetings, all Standing Authority Committees as defined in the Authority's Administrative Code, other standing, special, ad-hoc, advisory or other Authority Committees subject to the Brown Act including Policy Advisory Committees, Task Force, and sub-committees. This also includes the Regional Transportation Planning Committees (RTPCs) consisting of the Transportation Partnership and Cooperation (TRANSPAC), East County Transportation Planning (TRANSPLAN), Southwest Area Transportation Committee, West Contra Costa Transportation Advisory Committee (WCCTAC), and their respective advisory committees. The RTPCs that are Joint Powers Authorities (TRANSPAC, TRANSPLAN, and WCCTAC) should adopt their own resolution or make their own determination. Furthermore, the Executive Orders waived the following requirements:

- Local agencies must provide notice of each teleconference location from which a member of the legislative body will be participating in a public meeting.
- Each teleconference location must be accessible to the public.
- Members of the public must be able to address the legislative body at each teleconference location.
- Local agencies must post agendas at all teleconference locations.
- At least a quorum of the members of the local body must participate from locations within the boundaries of the territory over which the local body exercises jurisdiction.

On June 11, 2021, the Governor issued EO N-08-21, which rescinded the aforementioned modifications made to the Brown Act, effective September 30, 2021. On September 16, 2021, the Governor signed AB361, which went into effect on October 1, 2021, to provide local agencies with the ability to meet remotely during proclaimed state emergencies under modified Brown Act requirements, similar in many ways to the rules and procedures

established by the Governor's EOs, with a sunset date of January 1, 2024.

AB361 requires that a resolution be adopted by majority vote to enact the provisions of AB361 for a maximum period of 30 days, to continue meeting under the modified Brown Act requirements of AB361. On September 30, 2021, the Authority Board adopted Resolution 21-45-A proclaiming a local emergency, ratifying the proclamation of a State of Emergency, authorizing remote teleconference meetings of the legislative bodies of the Authority for the period of October 2021 pursuant to the Brown Act provision exemptions under AB361, and authorizing the 30-day renewal to be approved at subsequent meetings by minute order.

AB361 provisions can be used when a gubernatorial State of Emergency has been issued and remains active. It is not sufficient that county officials have issued a local emergency declaration; rather, the emergency declaration must be one that is made pursuant to the California Emergency Services Act (CESA) (California Government Code, Section 8625). It also permits a local agency to meet remotely when there is a State of Emergency declaration while State or local officials have recommended or required measures to promote social distancing. California Government Code, Section 54953, Subdivision (e), Paragraph (3), Subparagraph (B) (ii) applies if a State of Emergency has already been proclaimed pursuant to Section 8625 of the CESA. It states that if a State of Emergency remains active or State or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with Paragraph (3) of Subdivision (B), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to Subparagraph (A), (B), or (C) of Paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

- (A) The legislative body has reconsidered the circumstances of the State of Emergency.
- (B) Any of the following circumstances exist:
 - (i) The State of Emergency continues to directly impact the ability of the members to meet safely in-person.
 - (ii) State or local officials continue to impose or recommend measures to promote social distancing.

On March 1, 2022, local health officials, in alignment with the California Department of Public

Health (CDPH) and Center for Disease Control and Prevention (CDC), lifted the universal mask requirements for all people regardless of vaccination status in most indoor public settings and authorized businesses to make their own determination on setting masking requirements. The Governor's EO N-5-22 was issued to align with the CDPH and CDC's updated masking and public health recommendations.

The Authority Board continued to meet within 30 days to reconsider the circumstances and unanimously decided to continue meeting remotely under AB361 for all legislative body meetings through January 2022. Due to a 35-day lapse between the Authority Board regular meetings in December 2021 and January 2022, Authority staff called a special meeting of the Authority Board on January 5, 2022, to reconsider the continuation of meeting remotely under AB361. This item was reconsidered at the regular meetings held on January 19, 2022, and February 16, 2022, with unanimous approval to continue meeting remotely for all legislative bodies of the Authority through March 2022. There was a discussion at the March 16, 2022 Authority Board meeting about the conduct of meetings after March 2022 and there was unanimous approval from the Authority Board to continue conducting meetings remotely through May 2022 for all legislative bodies of the Authority. This decision was reaffirmed at a special Authority Board meeting on April 6, 2022, and the regular Authority Board meeting on April 20, 2022. At the May 18, 2022 Authority Board meeting, there was unanimous approval to continue conducting meetings remotely through August 2022 with 30-day reconsiderations in compliance with AB361. This decision was again unanimously reaffirmed at the Authority Board meetings held on June 15, 2022 and July 6, 2022 (special). At the Authority Board meeting on July 20, 2022, the Authority Board authorized staff to transition to conducting hybrid meetings for the Authority Board regular meetings starting in September, conduct an in-person Authority Board Workshop on September 15, 2022 through September 16, 2022, and continue conducting remote meetings for all other legislative body meetings of the Authority and the special meetings of the Authority Board, to remain in compliance with the 30-day reconsideration requirement of AB361. This decision was again unanimously reaffirmed at special Authority Board meetings held on August 17, 2022 and September 7, 2022. At the September 21, 2022 and October 19, 2022 Authority Board meetings, there was unanimous approval to reaffirm its decision made on July 20, 2022 and extend it through November 2022. This decision was again reaffirmed at the Authority Board meeting on November 16, 2022 and it was extended through December 2022. This decision

was again reaffirmed at a special meeting of the Authority Board on December 7, 2022.

On January 18, 2023, due to a 30-day lapse, the Authority Board adopted Resolution 23-04-A to re-authorize remote teleconferencing meetings of the legislative bodies pursuant to the Brown Act provisions of AB361, to adhere to the requirements of AB361.

On February 15, 2023, the Authority Board reaffirmed its decision for meeting conduct in March 2023. On March 15, 2023, the Authority Board reaffirmed its decision for meeting conduct in April 2023. On April 12, 2023 at an Authority Board special meeting, the Authority Board approved in-person meetings with a hybrid component for public participation effective April 19, 2023 for the regular Authority Board meetings and the continuation of conducting remote meetings for all other legislative bodies of the Authority and special meetings of the Authority Board pursuant to the Brown Act provision exemptions of AB361 and consistent with the CCHS' recommendations for social distancing for public meetings. On April 19, 2023, the Authority Board reaffirmed this decision for meeting conduct in May 2023. On May 17, 2023, the Authority Board reaffirmed its decision for meeting conduct in June 2023. On June 7, 2023 at a special meeting, the Authority Board reaffirmed its decision for meeting conduct in June 2023. The Authority Board is now reconsidering the conduct of meetings for July 2023, to adhere to the 30-day reauthorization requirement of AB361.

Authority staff have reconsidered the circumstances and determined that the CCHS is still recommending social distancing. The CCHS updated its Recommendations for Safely Holding Public Meetings guidance on March 27, 2023, and is still recommending social distancing, when feasible, to present the lowest risk of transmission of COVID-19. The CCHS' guidance recommends that if in-person meetings are to be held, the agency should still offer the public the opportunity to attend via a call-in option or an internet-based service option to give those at higher risk of and/or higher concern about COVID-19 an alternative to participating in-person. It also recommends social distancing, when feasible – i.e., six feet of separation between individuals, and recommends indoor masking for all attendees.

On October 17, 2022, the Governor announced that the COVID-19 State of Emergency would end on February 28, 2023. Due to local officials continuing to recommend social distancing consistent with Government Code, Section 54953(e)(3), the Authority Board has the option to continue conducting remote and hybrid meetings under AB361.

Staff requests that the Authority Board, having reconsidered the circumstances, continue in-person meetings with a hybrid component for public participation for the regular Authority Board meetings and continue conducting remote meetings for all other legislative bodies of the Authority and special meetings of the Authority Board pursuant to the Brown Act provision exemptions of AB361 and consistent with the CCHS' recommendations for social distancing for public meetings, to adhere to the 30-day reconsideration requirement of AB361.

CONSEQUENCE OF NEGATIVE ACTION: The Authority Board, in all its capacities, and its subcommittees and advisory bodies, would no longer conduct teleconferencing meetings under Government Code Section 54953(e).